

International Brotherhood of Electrical Workers, AFL-CIO, Local 1220 and CBS Inc. and Theatrical Stage Employees Union, Local No. 2 of International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, Party in Interest. Case 13-CD-427

June 27, 1991

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

The charge in this Section 10(k) proceeding was filed July 5, 1990, by CBS Inc., the Employer, alleging that International Brotherhood of Electrical Workers, AFL-CIO, Local 1220 (Local 1220) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Theatrical Stage Employees Union, Local No. 2 of International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO (Local 2). The hearing was held July 7, 1990, before Hearing Officer Myra J. Mattress.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.¹

I. JURISDICTION

The Employer is a New York corporation engaged in the business of radio and television broadcasting. The Employer owns and operates WBBM-TV in Chicago, Illinois, which is the only facility involved here. During the past calendar year, a representative period, the Employer had gross annual revenues in excess of \$100,000 from advertisement of nationally sold products. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 1220 and Local 2 are labor organizations within the meaning of Section 2(5).

II. THE DISPUTE

A. Background and Facts of the Dispute

The Employer has owned and operated WBBM-TV since the early 1950s. Since that time, both Local 1220 and Local 2 have represented bargaining unit employees at WBBM-TV. Both Unions had collective-bar-

gaining agreements with the Employer for identical terms, October 1, 1987, to September 30, 1990.

The work in dispute involves a process called "teleprompting," which is a term of art used to describe a system of rolling a printed script in front of an on-air speaker for the purpose of prompting the on-air speaker with the text to be delivered. In 1989, the Employer purchased equipment known as "Newstar," which is at the center of the work dispute. Prior to the operation of Newstar, the Employer used a mechanical prompting system operated by a Local 2 stagehand. The mechanical system required that news stories be typed on a typewriter to produce a hard copy, and then a Local 2 stagehand would assemble the hard copy text with tape in a continuous fashion on 8 x 11 paper. The text was then placed on a conveyor belt equipped with speed and directional controls and where an overhead television camera would transmit the text to a television monitor. The system's speed was determined by a Local 2 stagehand who operated the two types of controls.

In the fall of 1989, the Employer began using the Newstar system, which eventually supplanted the mechanical prompting system for news programs. Newstar is a computer system which allows the operator to produce, edit, and process information immediately by use of a word processor directly to a television monitor for on-air delivery. The operator of the Newstar prompting device operates a 16-button key pad and controller knob in order to control the speed of the text.

From December 1989 to March 1990, the Employer used both systems in a dual fashion for news programs,² with a Local 2 stagehand operating the mechanical system and a Local 1220 technician operating the Newstar system. In March 1990, the Newstar system became fully operational for news programs,³ and the Employer assigned the operation of the Newstar system to Local 1220. Consequently, Local 2 filed a grievance on behalf of the stagehands and a demand for arbitration for the Newstar work. In an effort to prevent the reassignment of the work to Local 2, Local 1220's business representative, Robert Janney, told the Employer that if the Newstar system control was assigned to Local 2, Local 1220 would pull all of its technicians off the job.

B. Work in Dispute

The disputed work involves the operation of the speed control device of the prompting subsystem of the Newstar system currently being used by CBS Inc. at

²The sports portion of the news program was still using a mechanical prompting system.

³The Employer's nonnews programs still use the mechanical prompting system operated by a Local 2 stagehand.

¹We grant the Employer's unopposed motion to correct the transcript.

its WBBM-TV station at 630 North McClurg Court, Chicago, Illinois.⁴

C. Contentions of the Parties

The Employer contends that the disputed work should be awarded to employees represented by Local 1220 on the basis of its collective-bargaining agreement with Local 1220, the Employer's preference and past practice, area and industry practice, and economy and efficiency of operations.

Local 1220 agrees with the Employer, and further relies on the factor of relative skills in contending that the disputed work should be awarded to employees represented by it.

Local 2 contends that the disputed work should be awarded to the employees represented by Local 2 based on its collective-bargaining agreement and the Employer's past practice. Local 2 further argues that the Board should give little, if any, weight to the factor of employer preference in this case, because here the Employer's preference arises only from its interpretation of a labor agreement.

D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

As noted above, in response to information that Local 2 had filed a grievance and a demand for arbitration for the Newstar work, Local 1220 informed the Employer that if the Newstar work were assigned to Local 2, Local 1220 would pull all the technicians in Chicago off the job. Thus we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. The parties stipulated that there exists no agreed-on method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors in-

involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

Neither Union has been certified by the Board as the collective-bargaining representative of a unit of the Employer's employees.

Both Local 1220 and Local 2 had collective-bargaining agreements with the Employer with effective dates from October 1, 1987, to September 30, 1990. Section 1.03(b)(1)(B)(d) of Local 1220's agreement with the Employer stated in part:

Where CBS operates any such electronic or electrical devices with its own employees and such device is mounted on or attached to equipment operated by Technicians, or is operated from the control room, such device shall be set up and/or operated by Technicians.

With reference to the use of computers which generate for display prompting information on news Programs, performers may manually operate the speed control device of the prompting equipment. If anyone other than the performer manually controls the speed of the equipment, it shall be a Technician.

The above provision had been included in successive collective-bargaining agreements since 1981. The Employer presented testimony that the above provision was negotiated into the agreement in direct response to the introduction of the Newstar system into the broadcasting industry, with the understanding that Local 1220 technicians would perform the computer prompting work when it became operational.

Local 2's agreement with the Employer provided at section 6.(b):

Scope of Duties—Teleprompter: The employees covered by this Agreement assigned to work as stagehands, shall operate and maintain all teleprompter devices even though such devices are leased or licensed by the Employer, provided, however, when a teleprompter device or some portion thereof is attached to a camera, the employee covered by this Agreement shall merely operate such device, but shall not attach it to or remove it from the camera.

Thus, the Local 1220 contract specifically refers to computer generated teleprompters, though the Local 2 contract does not. Although the language of the Local 2 contract arguably is sufficiently broad to cover the disputed work, we find that the specificity of the Local 1220 contract in referring to computer generated tele-

⁴Although the notice of hearing describes the disputed work generally as "[t]he operation of the 'Newstar' system currently being used by CBS Inc. at its WBBM-TV station," it is clear from the record that the work in dispute is as described above.

prompters favors an award of the disputed work to the employees represented by Local 1220.

2. Employer preference, assignment, and past practice

The Employer has expressed a preference that the work in dispute continue to be performed by Local 1220-represented employees. Although the mechanical prompting system used prior to the advent of Newstar was operated by Local 2 stagehands, that system was different from the Newstar computerized system and the Employer has consistently assigned the work in dispute to Local 1220-represented employees since the Newstar system became operational. Moreover, the Employer's national practice involving computer-generated prompting equipment is to assign it to IBEW-represented technicians unless it is leasing the equipment and subcontracting personnel from another company. Thus, we find that the factors of employer preference, assignment, and past practice favor an award of the disputed work to employees represented by Local 1220.

3. Area and industry practice

The record indicates with respect to area and industry practice that there is no consistent pattern and different equipment may be used. Accordingly, we find that this factor is inconclusive and does not favor an award of the disputed work to either group of employees.

4. Economy and efficiency of operations

Thomas Holland, the Employer's director of industrial relations east, testified that a Local 1220 technician who is assigned to operate the Newstar system can also perform several other duties, and thus the assignment of a technician allows for flexibility in scheduling personnel. In contrast, the Employer would have to assign a full-time Local 2 stagehand to operate the Newstar system exclusively. Thus, for example, a technician can operate the Newstar system during part of a shift and also operate the television camera during

the same shift, whereas if a stagehand were operating the Newstar system, both a technician and a stagehand would be needed in the same shift to perform these two functions. Accordingly, we find that this factor favors awarding the disputed work to employees represented by Local 1220.

5. Relative skills

John Byrne, the Employer's director of operations and engineering, testified that there was no skill necessary to operate the Newstar system. The Employer has been gradually training the technicians to operate the Newstar system; the time required to train an operator varies, but could require several weeks. Despite the Employer's investment of time in training the technicians, however, we find that this factor is inconclusive and does not favor an award of the disputed work to either group of employees.

Conclusion

After considering all the relevant factors, we conclude that employees represented by Local 1220 are entitled to perform the work in dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, Employer assignment, preference, and past practice, and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by Local 1220, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of CBS Inc. represented by International Brotherhood of Electrical Workers, AFL-CIO, Local 1220 are entitled to perform the operation of the speed control device of the prompting subsystem of the Newstar system currently being used by CBS Inc. at its WBBM-TV station at 630 North McClurg Court, Chicago, Illinois.